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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2005 64148

FRANKLIN ALEXANDER ORTIZ
1587½ W. 29th Street
Los Angeles, California 90007

A C C U S A T I O N

Physical Therapist Assistant License No.
AT 6537,

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California (Board).
2. On or about July 24, 2003, the Board issued Physical Therapist Assistant License Number AT 6537 to Franklin Alexander Ortiz (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2007, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2609 of the Code provides that :

2 The Board shall issue, suspend, and revoke licenses and approvals to practice
3 physical therapy as provided in this chapter.

4 5. Section 2660 of the Code provides that:

5 The board may, after the conduct of appropriate proceedings under the
6 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose
7 probationary conditions upon any license, certificate, or approval issued under this chapter for
8 unprofessional conduct that includes, but is not limited to, one or any combination of the
9 following causes:

10 “ . . .

11 "(d) Conviction of a crime which substantially relates to the
12 qualifications, functions, or duties of a physical therapist or physical therapy
13 assistant. The record of conviction or a certified copy thereof shall be conclusive
14 evidence of that conviction. . . .”

15 6. Section 2661 of the Code provides that:

16 A plea or verdict of guilty or a conviction following a plea of nolo contendere
17 made to a charge of a felony or of any offense which substantially relates to the qualifications,
18 functions, or duties of a physical therapist is deemed to be a conviction within the meaning of
19 this article. The Board may order the license suspended or revoked, or may decline to issue a
20 license, when the time for appeal has elapsed, or the judgement of conviction has been affirmed
21 on appeal or when an order granting probation is made suspending the imposition of sentence,
22 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person
23 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
24 of guilty, or dismissing the accusation, information, or indictment.

25 7. California Code of Regulations, Title 16, section 1399.20, provides that:

26 “For the purposes of denial, suspension or revocation of a license, pursuant to
27 Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be
28 substantially related to the qualifications, functions or duties of a person holding a license under

1 the Physical Therapy Practice Act if to a substantial degree it evidences present or potential
2 unfitness of a person to perform the functions authorized by the license or approval in a manner
3 consistent with the public health, safety or welfare. Such crimes or acts shall include but not be
4 limited to the following:

5 “(a) Violating or attempting to violate, directly or indirectly, or
6 assisting in or abetting the violation of, or conspiring to violate any provision or
7 term of the Physical Therapy Practice Act. . . .”

8 8. Section 2661.5, subdivision (a) of the Code provides that:

9 “In any order issued in resolution of a disciplinary proceeding before the
10 board, the board may request the administrative law judge to direct any licensee
11 found guilty of unprofessional conduct to pay to the board a sum not to exceed the
12 actual and reasonable costs of the investigation and prosecution of the case.”

13 CAUSE FOR DISCIPLINE

14 (Conviction of a Crime)

15 9. Respondent is subject to disciplinary action under sections 2660,
16 subdivision (d), and 2661 of the Code, and California Code of Regulations, Title 16, section
17 1399.20, subdivision (a), in that he was convicted of a crime substantially related to the
18 qualifications, functions, or duties of a physical therapist assistant. The circumstances are as
19 follows:

20 A. On or about March 8, 2005, in a criminal proceeding entitled
21 *People v. Franklin Ortiz*, in Superior Court, San Francisco County, Case No. 02203098,
22 respondent was convicted by a plea of nolo contendere to the crime of driving under the
23 influence of alcohol, a violation of Vehicle Code section 23152, subdivision (a), a
24 misdemeanor.

25 B. On or about March 8, 2005, respondent was placed on probation
26 for three years. He was ordered to serve 2 days in county jail, pay fines of \$1,466.00,
27 complete a three month first offender alcohol program, and his driving privilege was
28 restricted for three months.

1 C. The facts and circumstances surrounding this offense are as
2 follows:

3 On or about February 4, 2005, San Francisco police officers responded to a
4 report that respondent's vehicle was observed to be swerving on the road, almost hitting
5 parked vehicles. The police officers located the vehicle, and observed respondent pull out
6 of a parking lot in reverse at a high rate of speed, skid to a stop, then drive in a different
7 direction at a high rate of speed, drift into a traffic lane and almost hit the officers' patrol
8 car. The officers made an enforcement stop.

9 While talking to respondent, one of the officers detected a strong odor of
10 alcohol on his breath. He also observed respondent's eyelids were drooping and closing,
11 his speech was slow and his gait was unsteady. When the officer demonstrated the walk
12 and turn test, respondent stated, "I can't perform this test, I had too much to drink," and
13 refused to perform the field sobriety tests. He told the officer he had been drinking "a
14 couple of vodkas."

15 Respondent was arrested and charged with driving under the influence of
16 alcohol, a violation of Vehicle Code section 23152, subdivision (a), and engaging in a
17 motor vehicle exhibition of speed on a highway, a violation of Vehicle Code section
18 23109, subdivision (c).

19 DISCIPLINE CONSIDERATIONS

20 10. To determine the degree of discipline, if any, to be imposed on respondent,
21 Complainant alleges that on or about June 16, 1998, in a prior criminal proceeding entitled
22 *People v. Franklin Alexander Ortiz*, in Municipal Court, Los Angeles County, Case Number
23 8PN03997, respondent was convicted of theft of property, a violation of Penal Code section 484,
24 subdivision (a) and was placed on probation for two years. The record of the criminal
25 proceeding is incorporated as if fully set forth.

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1 PRAYER

2 **WHEREFORE**, Complainant requests that a hearing be held on the matters
3 herein alleged, and that following the hearing, the Physical Therapy Board of California issue a
4 decision:

5 1. Revoking or suspending Physical Therapist Assistant License Number AT
6 6537, issued to respondent Franklin Alexander Ortiz;

7 2. Ordering respondent to pay the Physical Therapy Board of California the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 2661.5;

10 3. Taking such other and further action as deemed necessary and proper.

11 DATED: October 27, 2005

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13 Original Signed By:
14 STEVEN K. HARTZELL
15 Executive Officer
16 Physical Therapy Board of California
17 State of California
18 Complainant

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